

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ENVIRONMENTAL DEFENSE CENTER, a non-profit corporation,

Plaintiff,

VS.

PACIFIC COAST ENERGY
COMPANY LP, a limited partnership,

Defendant.

Case No. 2:18-cv-06065-CBM-FFMx

[PROPOSED] CONSENT DECREE

CONSENT DECREE

WHEREAS, Plaintiff Environmental Defense Center (“EDC”) is a non-profit public benefit corporation and law firm dedicated to the preservation and enhancement of the local environment primarily within Ventura, Santa Barbara, and San Luis Obispo Counties through education, advocacy, and legal action;

WHEREAS, Defendant Pacific Coast Energy Company LP (“PCEC”) is a limited partnership that operates the Orcutt Hill Facilities which consist of onshore crude oil and natural gas production, processing, storage, and transfer facilities located in the Orcutt Oilfield south of Orcutt in the northern portion of Santa Barbara County, California (“Facility”). EDC and PCEC are collectively referred to herein as the “Parties”;

WHEREAS, storm water discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination

1 System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control
2 Board], Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order
3 97-03-DWQ and as subsequently amended by Water Quality Order No. 2014-0057-
4 DWQ) (hereinafter the “Permit”), issued pursuant to Section 402 of the Federal Water
5 Pollution Control Act (“Clean Water Act” or “the Act”), 33 U.S.C. §1342;

7 WHEREAS, the Permit includes the following requirements for all permittees,
8 including PCEC: 1) develop and implement a storm water pollution prevention plan
9 (“SWPPP”); 2) control pollutant discharges using best available technology
10 economically achievable (“BAT”) and best conventional pollutant control technology
11 (“BCT”) to prevent or reduce the discharge of pollutants; 3) implement BAT and BCT
12 through the development and application of Best Management Practices (“BMPs”),
13 which must be included and updated in the SWPPP; and 4) when necessary,
14 implement additional BMPs to prevent or reduce any pollutants that are causing or
15 contributing to any exceedance of water quality standards;

16 WHEREAS, on April 17, 2018, EDC served PCEC, the Administrator of the
17 Environmental Protection Agency (“EPA”), the Executive Director of the State Water
18 Resources Control Board (“State Board”), the Executive Officer of the Central Coast
19 Regional Water Quality Control Board (“Regional Board”), the U.S. Attorney
20 General, and the Regional Administrator of the EPA (Region 9) with a notice of intent
21 to file suit (“60-Day Notice”) under Sections 1365(a)(1) and 1365(b)(1)(A) of the
22 Clean Water Act, alleging violations of the Act and the Permit at the Facility;

23 WHEREAS, EDC filed a complaint (“Complaint”) against PCEC in the United
24 States District Court, Central District Court of California on July 12, 2018, entitled
25

1 *Environmental Defense Center v. Pacific Coast Energy Company LP* (Case No. 2:18-
2 cv-06065-CBM-FFM);

3 WHEREAS, EDC contends in its 60-Day Notice and Complaint that, among
4 other things, PCEC has repeatedly discharged polluted storm water in violation of the
5 Permit and the Clean Water Act;

6 WHEREAS, PCEC denies all allegations set forth in the 60-Day Notice and
7 Complaint;

8 WHEREAS, the Parties, through their authorized representatives and without
9 either adjudication of EDC's claims or any admission by PCEC of any alleged
10 violation or other wrongdoing, believe it is in their mutual interest and choose to
11 resolve in full EDC's allegations in the 60-Day Notice and Complaint through
12 settlement and avoid the cost and uncertainties of further litigation;

13 NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE
14 PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

15 **I. COMMITMENTS OF PCEC**

16 1. PCEC agrees to the following terms and conditions in full and complete
17 satisfaction of the claims covered by this Consent Decree. PCEC has implemented or
18 shall implement structural and non-structural BMPs, as described more fully below.

19 2. **Road Network Improvements:** No later than December 31, 2019,
20 PCEC shall implement Best Management Practices ("BMPs"), as agreed upon by the
21 Parties and listed below. PCEC shall continue roadway maintenance as necessary to
22 maintain full compliance with the General Permit.

23 The BMP locations are identified by the GPS coordinate locations at the

1 Facility, specified in the following table.

2	GPS Coordinate Location / Site Name	Action
3	34.823051, -120.418856 / Newlove 70 Water Bar	Install water bar with rip-rap to reduce roadway erosion
4	34.821539, -120.417077 / Newlove 108 Water Bar	Install water bar with rip-rap to reduce roadway erosion
5	34.839131, -120.409619 / Pinal Culvert 1	Install culvert w/ rip-rap to reduce roadway erosion
6	34.839003, -120.411761 / Pinal Swale	Install swale w/ rip-rap to reduce roadway erosion
7	34.827205, -120.406535 / Newlove Shoulder Rip-rap 1	Install rip-rap on road shoulder to minimize roadway erosion
8	34.827793, -120.420487/ Cal Coast Road Shoulder Rip-rap	Install rip-rap on road shoulder to minimize roadway erosion

9 Within fourteen (14) days of each of the above road network improvements,
10 PCEC shall e-mail EDC digital photographs confirming said improvements.

11 3. PCEC has regraded the mouth of the well pad located north of the
12 Squires 34 Sampling Location 9 to ensure no storm water that falls at the mouth runs
13 off to the road. Photos of this improvement are attached hereto as Exhibit A.

14 4. PCEC shall include the list of pads, Pods, and road stretches and the
15 illustrated schematics included in the 2018 PCEC Berm Evaluation (i.e., pages 1
16 through 243 of the Evaluation) as an attachment to the SWPPP.

17 5. **Storm Water Monitoring.**
18 a. To verify the performance of the BMPs installed in the area, PCEC
19 shall add an additional sampling location at the base of the truck loading area located
20 proximate to the Pinal LACT Unit, just above the Pinal Tank Facilities sampling
21 location (shown in the figure attached hereto as Exhibit B).

1 b. PCEC shall clarify in its Monitoring Implementation Plan that it
2 will collect, analyze, and subsequently report on the State Board's Storm Water
3 Multiple Application and Report Tracking System ("SMARTS") for any sample(s) of
4 any storm water discharge during a qualifying storm event from the first well pad or
5 Pod to discharge in each drainage area at the Facility, even if that well pad or Pod is
6 not a defined discharge location in the SWPPP. Sampling reports shall indicate the
7 assigned numeric identifier for each pad or POD at which a sample is taken. The
8 SWPPP maps shall be updated to include the assigned numeric identifier for each pad
9 and POD in order to identify the location of samples taken at the Facility.

10 6. **Amendment of Storm Water Pollution Prevention Plan.** Within thirty
11 (30) days of the Effective Date of this Consent Decree, PCEC shall amend the
12 Facility's SWPPP as follows to incorporate all changes, improvements, sample log
13 forms, and BMPs set forth in or resulting from this Consent Decree.

14 a. PCEC shall ensure that all maps, tables, and text comply with the
15 requirements of the Permit or other applicable regulatory standard.

16 b. PCEC shall revise, as necessary, the SWPPP to describe all
17 structural and non-structural BMPs (e.g., check dams, water bars, rip rap, hay bales,
18 etc.), provide details of the measures to be installed including the locations of all
19 BMPs, discuss how the BMPs will be maintained, and discuss why such BMPs should
20 be effective in addressing the quality of storm water discharges from the Facility.

21 c. PCEC shall ensure that the SWPPP includes procedures to track
22 berm maintenance and includes specifics about training Facility staff on how to
23 maintain and repair berms.

1 d. A copy of the amended SWPPP shall be provided to EDC within
2 thirty (30) days of completion and submittal to SMARTS.

3 7. **Reports.** During the term of this Consent Decree, PCEC shall send a
4 courtesy email to EDC on or immediately following the date that PCEC uploads any
5 documents to SMARTS, notifying EDC that such filing has been made.

7 **II. MITIGATION, FEES, AND COSTS**

8 8. **Mitigation Payment.** In recognition of the good faith efforts by PCEC
9 to comply with all aspects of the Permit and the Clean Water Act at the Facility, and
10 in lieu of payment by PCEC of any civil penalties under the Act, which may have
11 been assessed in this action if it had been adjudicated adverse to PCEC, the Parties
12 agree that PCEC will pay the sum of one hundred fifteen thousand dollars
13 (\$115,000.00) to the Rose Foundation for Communities and the Environment (“Rose
14 Foundation”) for the sole purpose of providing grants for watershed restoration
15 projects in the San Antonio Creek, Orcutt Creek, and/or Santa Maria River
16 watersheds. Payment shall be provided to the Rose Foundation as follows: Rose
17 Foundation, 201 4th Street, Suite 102, Oakland, CA 94607, Attn: Tim Little. Payment
18 shall be made by PCEC to the Rose Foundation within thirty (30) calendar days of the
19 Effective Date. PCEC shall copy EDC with any correspondence and a copy of the
20 check sent to the Rose Foundation. The Rose Foundation shall provide notice to the
21 Settling Parties within thirty (30) days of when the funds are dispersed by the Rose
22 Foundation, setting forth the recipient and purpose of the funds.

23 9. **Reimbursement of Fees and Costs.** PCEC shall reimburse EDC in the
24 amount of one hundred eighty thousand dollars (\$180,000.00) to help defray EDC’s
25

1 reasonable investigation, expert, and attorneys' fees and costs, and all other
2 reasonable costs incurred as a result of investigating the activities at the Facility
3 related to this Consent Decree, bringing these matters to PCEC's attention, and
4 negotiating a resolution of this action in the public interest. PCEC shall tender said
5 payment, payable to "Environmental Defense Center," within thirty (30) days of the
6 Effective Date.

7
8 **10. Compliance Monitoring Funds.** PCEC shall reimburse EDC for the
9 costs of monitoring the terms of this Consent Decree in the amount of five thousand
10 dollars (\$5,000). Payment shall be made within thirty (30) days after the entry of this
11 Consent Decree.

12
13 **11. Dispute Resolution.** If a dispute between the Parties under this Consent
14 Decree arises, or either Party believes that a breach of this Consent Decree has
15 occurred, the Parties shall schedule a meet and confer within ten (10) business days of
16 receiving written notification from the other Party of a request for a meeting to
17 determine whether a violation of this Consent Decree has occurred and to develop a
18 mutually agreed upon plan, including implementation dates, to resolve the dispute. In
19 the event that such disputes cannot be resolved through this meet and confer process,
20 the Parties agree to request a settlement meeting before the Magistrate Judge assigned
21 to this action. The Parties agree to file any waivers necessary for the Magistrate Judge
22 to preside over any settlement conference pursuant to this Paragraph. In the event that
23 the Parties cannot resolve the dispute by the conclusion of the settlement meeting with
24 the Magistrate Judge, the Parties agree to submit the dispute via motion to the District
25 Court. In resolving any dispute arising from this Consent Decree, the Court shall have
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1 discretion to award attorneys' fees and costs to either party. The relevant provisions
2 of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil
3 Procedure shall govern the allocation of fees and costs in connection with the
4 resolution of any disputes before the District Court. The District Court's award of any
5 relief in a dispute brought pursuant to this paragraph shall be limited to compliance
6 orders and awards of attorneys' fees and costs, subject to proof.

7

8 **III. JURISDICTION OVER PARTIES AND SUBJECT MATTER OF THE**
9 **CONSENT DECREE**

10

11 12. **Jurisdiction.** For the purposes of this Consent Decree, the Parties
12 stipulate that the United States District Court of California, Central District of
13 California, has jurisdiction over the Parties and subject matter of this Consent Decree.
14 The Parties stipulate that venue is appropriate in the Central District of California and
15 that PCEC will not raise in the future as part of enforcement of this Consent Decree
16 whether EDC has standing to bring the Complaint or any subsequent action or motion
17 pursuant to the Dispute Resolution procedures herein. The Parties further stipulate
18 and respectfully request that the Court retain jurisdiction to oversee compliance with
19 the terms of this Consent Decree, subject to the dispute resolution procedures
20 specified in Paragraph 11 above. *See Kokkonen v. Guardian Life Ins. Co. of America*,
21 511 U.S. 375, 378 (1994).

22

23 **IV. COMMITMENTS OF EDC**

24

25 13. **Submission of Consent Decree to Federal Agencies.** Within three (3)
26 business days of receiving all of the Parties' signatures to this Consent Decree, EDC
27 shall submit this Consent Decree to the U.S. Department of Justice ("DOJ") and EPA
28

1 for agency review consistent with 40 C.F.R. §135.5. The agency review period
2 expires forty-five (45) calendar days after receipt by the DOJ, evidenced by
3 correspondence from DOJ establishing the review period. In the event DOJ
4 comments negatively on the provisions of this Consent Decree, the Parties agree to
5 meet and confer to attempt to resolve the issues raised by DOJ.

6
7 14. If for any reason the DOJ or the District Court should decline to approve
8 this Consent Decree in the form presented, the Parties shall use their best efforts to
9 work together to modify the Consent Decree within thirty (30) days so that it is
10 acceptable to the DOJ or the District Court. If the Parties are unable to modify this
11 Consent Decree in a mutually acceptable manner that is also acceptable to the District
12 Court, this Consent Decree shall immediately be null and void as well as inadmissible
13 as a settlement communication under Federal Rule of Evidence 408 and California
14 Evidence Code section 1152.
15

16 **V. WAIVER, RELEASES AND COVENANTS NOT TO SUE**

17 15. In consideration of the payments that are to be made by PCEC above,
18 and except as otherwise provided by this Consent Decree, EDC hereby covenants not
19 to sue or to take administrative action against PCEC for any allegations and claims
20 that were or could have been set forth in the 60-Day Notice Letter and Complaint for
21 violations of the Clean Water Act, 33 U.S.C. §§ 1251-1387, at the Facility, and all
22 other claims known and unknown existing as of the date of entry of this Consent
23 Decree that could be asserted for violations of the Clean Water Act occurring up to
24 and including the Termination Date of this Consent Decree.
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26 16. The Parties forever and fully release each other and their respective
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1 parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current
2 and former employees, attorneys, officers, directors and agents from any and all
3 claims and demands of any kind, nature, or description whatsoever, and from any and
4 all liabilities, damages, injuries, actions or causes of action, either at law or in equity,
5 which the Parties have against each other arising from EDC's allegations and claims
6 as were or could have been set forth in the 60-Day Notice Letter and Complaint for
7 violations of the Clean Water Act at the Facility, and all other claims known and
8 unknown existing as of the date of entry of this Consent Decree that could be asserted
9 for violations of the Clean Water Act occurring up to and including the Termination
10 Date of this Consent Decree.

13 17. The Parties acknowledge that they are familiar with section 1542 of the
14 California Civil Code, which provides:

15 A general release does not extend to claims that the creditor or releasing
16 party does not know or suspect to exist in his or her favor at the time of
17 executing the release, and that if known by him or her would have
18 materially affected his or her settlement with the debtor or released party.
19 The Parties hereby waive and relinquish any rights or benefits they may have under
20 California Civil Code section 1542 with respect to any other claims against each other
21 arising from, or related to, the allegations and claims as set forth in the 60-Day Notice
22 Letter and Complaint for violations of the Clean Water Act at the Facility, and all
23 other claims known and unknown existing as of the date of entry of this Consent
24 Decree that could be asserted for violations of the Clean Water Act occurring up to
25 and including the Termination Date of this Consent Decree.

27 18. **No Admission.** This Consent Decree is a settlement of disputed facts
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1 and law. It is not an admission or adjudication regarding any allegations by EDC in
2 this case or of any fact or conclusion of law related to those allegations. It is not
3 evidence of any wrongdoing or misconduct on the part of PCEC. However, this
4 Paragraph shall not diminish or otherwise affect the obligations, responsibilities, and
5 duties of the Parties under this Consent Decree.

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7 VI. MISCELLANEOUS PROVISIONS

8 **19. Effective Date.** The Effective Date of this Consent Decree shall be upon
9 the subsequent entry of the Consent Decree by the Court.

10 **20. Term of Consent Decree.** This Consent Decree shall terminate on
11 December 31, 2020 or through the conclusion of any proceeding to enforce this
12 Consent Decree initiated prior to December 31, 2020 or until the completion of any
13 payment or affirmative duty required by this Consent Decree, whichever is the later
14 occurrence.

15 **21. Execution in Counterparts.** The Consent Decree may be executed in
16 one or more counterparts which, taken together, shall be deemed to constitute one and
17 the same document.

18 **22. Facsimile Signatures.** The Parties' signatures to this Consent Decree
19 transmitted by facsimile or electronic mail transmission shall be deemed binding.

20 **23. Construction.** The language in all parts of this Consent Decree, unless
21 otherwise stated, shall be construed according to its plain and ordinary meaning. The
22 captions and paragraph headings used in this Consent Decree are for reference only
23 and shall not affect the construction of this Consent Decree.

24 **24. Authority to Sign.** The undersigned are authorized to execute this

1 Consent Decree on behalf of their respective parties and have read, understood and
2 agreed to all of the terms and conditions of this Consent Decree.

3 **25. Integrated Consent Decree.** All agreements, covenants, representations
4 and warranties, express or implied, oral or written, of the Parties concerning the
5 subject matter of this Consent Decree are contained herein.

6 **26. Severability.** In the event that any of the provisions of this Consent
7 Decree are held by a court to be unenforceable, the validity of the enforceable
8 provisions shall not be adversely affected.

9 **27. Choice of Law.** This Consent Decree shall be governed by the laws of
10 the United States, and where applicable, the laws of the State of California.

11 **28. Full Settlement.** This Consent Decree constitutes a full and final
12 settlement of this matter. It is expressly understood and agreed that the Consent
13 Decree has been freely and voluntarily entered into by the Parties with and upon
14 advice of counsel.

15 **29. Negotiated Agreement.** The Parties have negotiated this Consent
16 Decree, and agree that it shall not be construed against the party preparing it, but shall
17 be construed as if the Parties jointly prepared this Consent Decree, and any
18 uncertainty and ambiguity shall not be interpreted against any one party.

19 **30. Modification of the Agreement.** This Consent Decree, and any
20 provisions herein, may not be changed, waived, or discharged unless by a written
21 instrument signed by the Parties.

22 **31. Assignment.** Subject only to the express restrictions contained in this
23 Consent Decree, all of the rights, duties and obligations contained in this Consent
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1 Decree shall inure to the benefit of and be binding upon the Parties, and their
2 successors and assigns.
3

4 **32. Mailing of Documents to EDC/Notices/Correspondence.** Any notices
5 or documents required or provided for by this Consent Decree or related thereto that
6 are to be provided to EDC pursuant to this Consent Decree shall be, to the extent
7 feasible, sent via electronic mail transmission to the e-mail addresses listed below or,
8 if electronic mail transmission is not feasible, via overnight mail/delivery service or
9 certified U.S. Mail with return receipt, or by hand delivery to the following address:
10

11 EDC:

12 Maggie Hall
13 Environmental Defense Center
14 906 Garden Street
15 Santa Barbara, CA 93101
16 E-mail: mhall@environmentaldefensecenter.org

17 With copies sent to:

18 Michael R. Lozeau
19 Lozeau Drury LLP
20 1939 Harrison Street, Suite 150
21 Oakland, CA 94612
22 E-mail: michael@lozeaudrury.com

23 Unless requested otherwise by PCEC, any notices or documents required or
24 provided for by this Consent Decree or related thereto that are to be provided to PCEC
25 pursuant to this Consent Decree shall, to the extent feasible, be provided by electronic
26 mail transmission to the e-mail addresses listed below, or, if electronic mail
27 transmission is not feasible, by overnight mail/delivery service or certified U.S. Mail
with return receipt, or by hand delivery to the addresses below:

28 PCEC:

1 Philip Brown
2 Pacific Coast Energy Company LP
3 1555 Orcutt Road
4 Orcutt, CA 93455
5 E-mail: Philip.Brown@pceclp.com

6 With copies sent to:

7 Ryan Waterman
8 Brownstein Hyatt Farber Schreck, LLP
9 225 Broadway, Suite 1670
10 San Diego, CA 92101
11 E-mail: rwaterman@bhfs.com

12 Notifications of communications shall be deemed submitted on the date that they are
13 emailed, or postmarked and sent by first-class mail or deposited with an overnight
14 mail/delivery service. Any changes of address or addressees shall be communicated
15 in the manner described above for giving notices.

16 **33. Force Majeure.** A force majeure event is any event outside the
17 reasonable control of PCEC that causes a delay in performing tasks required by this
18 Consent Decree that cannot be cured by due diligence. Delay in performance of a task
19 required by this Consent Decree caused by a force majeure event is not a failure to
20 comply with the terms of this Consent Decree, provided that PCEC notifies EDC of
21 the event; the steps that PCEC will take to perform the task; the projected time that
22 will be needed to complete the task; and the measures that have been taken or will be
23 taken to prevent or minimize any impacts to storm water quality resulting from delay
24 in completing the task.

25 PCEC will notify EDC of the occurrence of a force majeure event as soon as
26 reasonably possible but, in any case, no later than fifteen (15) days after the
27 occurrence of the event. In such event, the time for performance of the task will be
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extended for a reasonable period of time following the force majeure event.

By way of example and not limitation, force majeure events include:

- (i) Acts of God, war, insurrection, or civil disturbance;
 - (ii) Earthquakes, landslides, fire, floods;
 - (iii) Actions or inactions of third parties over which PCEC has no control;
 - (iv) Unusually adverse weather conditions;
 - (v) Restraint by court order or order of public authority;
 - (vi) Strikes; and
 - (vii) Litigation, arbitration, or mediation that causes delay.

Force majeure events do not include normal inclement weather, economic hardship or inability to pay.

34. The settling Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the Court for its approval and entry as a final judgment.

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGE]

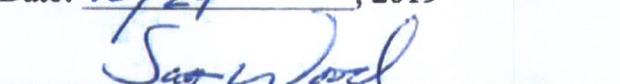
1 ENVIRONMENTAL DEFENSE CENTER

2 Date: 10-29, 2019

3 
4 Judith Pirkowitsch
5 President, Board of Directors
6 Environmental Defense Center

7 PACIFIC COAST ENERGY COMPANY LP

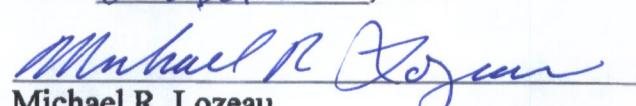
8 Date: 10/29, 2019

9 
10 Scott Wood
11 Chief Executive Officer

12 Approved as to form:

13 LOZEAU DRURY LLP

14 Date: October 30, 2019

15 
16 Michael R. Lozeau
17 Attorneys for Environmental Defense Center

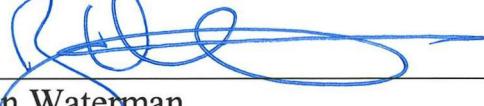
18 ENVIRONMENTAL DEFENSE CENTER

19 Date: October 30, 2019

20 
21 Margaret Hall
22 Attorney for Environmental Defense Center

1 BROWNSTEIN HYATT FARBER SCHRECK, LLP
2

3 Date: Oct. 29, 2019
4

5 
6 Ryan Waterman
7 Attorney for Pacific Coast Energy Company LP
8

9 APPROVED AND SO ORDERED, this ____ day of _____.
10

11 UNITED STATES DISTRICT JUDGE
12

13 _____
14 Hon. Consuelo B. Marshall
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EXHIBIT A

Regrading of mouth of Squires 34 well pad entrance



EXHIBIT B

Location of proposed sampling point 14.b:

